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Legal **DEPARTMENT**

B. **BRANCH**

Subject:

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Rules and Notifications under the Town Planning Act, 1915.

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2/5

K.S.R.

2/5.

Office of the A.L.A.

The draft Town Planning Scheme, Ahmedabad, No. V (City Wall Improvement) was submitted to Government for Sanction in 1934, and Government proposes to sanction it now in 1942. Section 14 of the Bombay Town Planning Act, 1915, was amended in 1938 and in sub-section (2) of the said section the words "within the prescribed period" were inserted after the word "may" in the said sub-section by the amending Act, i.e. Bom. XXI of 1938. It appears that the rules prescribing this period were made in 1941, so that in the year 1934 when the Town Planning Scheme was submitted there was no such provision as in section 14(2) or as in rule 8(4) in force at that time. The said rule 8(4) prescribed a period of 12 months within which sanction should be given under section 14(2) from the date of the submission of the scheme to the Provincial Government under section 14(1). On the date this rule came into force that is in 1941 the period of 12 months in respect of this scheme had already expired. The requirement contained in this rule was therefore impossible of performance in the case of this scheme. The Remembrancer of Legal Affairs is therefore inclined to take the view that the rule cannot be held to apply to the scheme in question. The point is of fundamental importance for the validity of the scheme under the Town Planning Act. The amendment of the Act in 1938 is procedural in character, and may be regarded as directory but not mandatory; the rule connected with it was framed only in 1941; and it remains uncertain whether the enactment has retrospective operation, and in any case whether it adversely affects a scheme in relation to which the procedural provision has already become impossible of observance. The Advocate General is therefore requested to say whether the Remembrancer of Legal Affairs' view is correct.

Sd/- P. N. Moos.
Remembrancer of Legal Affairs.

SRT/30.4. U.S. to Advocate General, Bombay, No. 3364, dated the 18th April, 42

I agree with the view of the A. L. A.

2. The enactment in section 14(2) of the Act by the addition of the words "within the prescribed period" by Act XXI of 1933 and the enactment in rule 8(6) in 1941 prescribing a period of 12 months from the date of the submission of the scheme to the Government under section 14(1) for the granting of the sanction under section 14(2) cannot affect the scheme submitted to Government for sanction in 1931.

3. It is a fundamental rule of the construction of statutes that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. A further rule of construction is that, in the absence of a clear contrary indication, retrospective effect should not be given to a statute so as to take away or impair vested rights. See Maxwell (8th Ed.) pp 169 and 190.

4. There is nothing in the enactment of the Act or the rule to indicate that the enactments were intended to apply to schemes which had already been submitted to Government for sanction prior to the enactment and were pending before the Government.

5. If the enactments are read so as to affect pending schemes, the result would be that in respect of schemes submitted for sanction more than a year previous to the date of the coming into operation of the amended rule, the Government would have lost its right of sanctioning them without an opportunity being given to them to sanction before the amendment came into force. In the absence of express words, such a construction would not be adopted even in the case of a procedural statute like the law of limitation. See Whitley's Limitation Act (2nd Ed.) Vol. I pp 135, 140; and, the cases in 41 Cal. 1125 and 39 Mad. 645.

Sd/- E.C.Setalvad.
12.8.42.
Advocate General.

/30.4.

Office of the H.L.A.

Two revised draft notifications in place of the draft notification at pages 360-374 ante are sent herewith.

2. Clause (2) of the G.O. draft notification provides that the question of ownership of the lands included in appendix C to the draft scheme will be referred to the special officer appointed under section 4 of the Act. Appendix C to the draft scheme specifies the lands forming part of the moat vesting in the Municipality. Government has decided that the lands occupied by the moat shall vest in the municipality (vide para. 6 of G.O. office note on p.363 ante). This provision would not therefore be in order as Government does not desire to take up the question of ownership in respect of all the lands specified in appendix C. Presumably, this is inserted with a view to determine the ownership of S.Nos. 1744 and 1745 of Railwaypura in Appendix C which do not form part of the moat (vide B on p.373 ante and portion 'C' on p.363 ante). But this has not been made clear in this clause. Section 4 of the Act provides that when there is a disputed claim as to the the ownership of any land included in an area in respect of which the local authority has declared its intention to make a town planning scheme and any entry in the record of rights or mutation register relevent to such disputed claim is inaccurate or inconclusive, an inquiry may be held on an application being made by the local authority or the Arbitrator at any time prior to the date on which the Arbitrator draws up the final scheme under clause 1c of section 9c by such officer as the Commissioner may appoint for the purpose of deciding who shall be deemed to be the owner for the purposes of this Act. Since Government desires to decide the ownership of plots No. 1744 and 1745 of Railwaypura, Mr. Soparkar, who is proposed to be appointed as Arbitrator, may be instructed by an executive order to make an application to the Commissioner in this regard under the aforesaid section before the final scheme is drawn up by him. It does not appear that the proposed clause (2) of the modifications can be properly embodied in the present sanction order. It has, therefore, been deleted in the revised draft notification. The objection can be achieved by issuing executive orders in this behalf.

3. The remarks column of the proposed appendix (~~reffered~~ referred to as 'schedule' in the revised draft, at pp. 331-335 does not appear to be necessary and has been deleted.

4. Clauses (3) and (4) of the G.R. draft notification are outside the scope of a notification under section 14(2) of the Act and cannot therefore be inserted in the proposed notification. They have therefore been deleted in the revised draft.

5. The draft G.R. at pp.366-368 ante is legally in order.

sd/- P.N. Moos 4/5.

Remembrancer of Legal Affairs.

U.R. to G.O. No. 3778, dated the 6th May 1912.

NOTIFICATION.

General Department.

Bombay Castle, 1932.

No. Whereas in exercise of the powers conferred by sub-section (1, of Section 9 of the Bombay Town-planning Act, 1915 (Bom.I of 1915) (hereinafter referred to as "the said Act", the Ahmedabad Borough Municipality (hereinafter referred to as "the said Municipality" by its Resolution No. C. dated the 16 the April 1927 declared its intention to make a town planning scheme known as the City Wall Improvement Scheme, Ahmedabad, No V, in respect of the area shown by a yellow verge, on the plan marked "A3465" signed by the Chairman, Town-planning Committee, and deposited in the office of the said municipality.

And whereas under sub-section (2, of Section 9 of the said Act, the said Municipality published at page 910 of part II of the Bombay Government Gazette dated the 28th April 1927 such declaratio-on of its intention to make a scheme and appli-ed to the Government of Bombay (hereinafter referred to as "the Government", for sanction for the making of such scheme; and under sub-section (3, of the said section, sent to the Government a plan showing the area which it proposed to include in the town planning scheme;

And whereas objections and suggestions to such scheme, communicated in writing by persons affected by such scheme were duly considered by the Government.

And whereas the Government in exercise of the powers conferred by sub/section (6) of Section 9 of the said Act, by its notification in the General Department No.7038 dated the 22nd April 1930 sanctioned the making of the said scheme, subject to the modification that it shall apply only to the area measuring about 177 acres as shown in plan No.A.3179 prepared by the Consulting Surveyor to Government and deposited in the office of the said Municipality

And whereas under sub/section (1) of Section 10 of the said Act, the said Municipality published in the prescribed manner the draft scheme in respect pf the area for which sanction was given

And whereas the said Municipality, after considering objections under section 12 of the said Act submitted the draft scheme to the Government for its sanction under sub-section(1) of Section 14 of the said Act, in the manner provided thereing

And whereas it has been noticed that the said Municipality not having alloted any building plots to the Government in lieu of Government land specified in Appendix D to the draft scheme, excepting S.No.14 of Shankotda, alloted or reserved in the draft scheme under clause (d) of section 3 of the said Act, the Government consider that the building plots should be allotted to it in lieu of the said Government land.

Now, therefore, in exercise of the powers conferred by sub-section (2) of section 14 of the said Act, the Government is pleased to sanction the draft scheme, subject to the following modification, namely:-

In addition to the plots allotted

to the Government in the draft scheme, the final plots specified in the Schedule hereto annexed shall be allotted to the Government free from any reservations or allotments under clause (d) of Section 3 of the said Act, in liue of the aforesaid Government land.

The said scheme shall be open for the inspection of the public, at the office of the said Municipality. during officer hours on every day except Sundays and holidays.

Schedule.

(Here insert C-C at pp.331/335 ante)

By order of the Governor of Bombay.

Joint Secretary to Government.

SNT/30.4.

NOTIFICATION.

General Department.

Bombay Castle, 1942.

No. :- In exercise of the powers conferred by section 29 of the Bombay Town-planning Act, 1925 (Bom.7 of 1915) the Government of Bombay is pleased to appoint Mr.G.B.Soparkar, to be an arbitrator in respect of the draft Scheme sanctioned in Government Notification in the General Department, No. dated

By order of the Governor of Bombay,

Secretary to Government.

SHT/30.4.

Office of the R.L.A.

Para 7 of the draft notification on p.376 recites a statement of facts (cf. portion A in G.D. draft on p. 370 ante). It provides inter alia that the municipality did not allot any building plot to Government in lieu of Government land specified in Appendix D to the draft scheme except survey number 14 of Sharkotda, allotted or reserved in the draft scheme under (a) of section 3 of the Bombay Town Planning Act, 1915. This statement is based on the opening portion of para 3 of the Consulting Surveyor's letter on pp. 322-23 ante. It will be seen that S.No. 14 was previously assigned by Government to the Municipality but subsequently an area admeasuring about 11,757 sq. yds. of S. No.14 of Sharkotda was exchanged for an equal area in certain other Government lands, (vide Government Resolution, Revenue Department, No. 4233/39 dated 12 the November 1940). Thus apart from some area of S.No. 14 of Sharkotda Government were not allotted any building plots in lieu of Government land specified in Appendix D.

2. In view of the position explained above, it would be necessary to retain the portion in para 7 of the draft notification on p.376 ante proposed to be omitted, as being consistent with the facts of this case. It is not necessary to explain in the notification how this area came to be excepted. The amendment suggested by the A(R) in his minute dated 26th June 1942 on p. 409 ante does not appear to be consistent with the facts stated above.

3. To be more accurate para 7 of the draft notification may be further amended as shown in pencil on p. 376 ante.

Sd/- P.B.H. 27/7.

Commissioner of Legal Affairs.

U.O. to G.D.No. 6218 , dated the 28th July 1942.

SMT/1.8.

Office of the R.L.A.

A revised draft notification is sent herewith.

Sd/- H.K.D. 29/7.

for Remembrancer of Legal Affairs.

U.R. to C.D., No. 6178 , dated the 30th July 1942.

Bombay Town Planning Act, 1915

NOTIFICATION.

General Department.

Bombay Castle, July 1942.

No. 3550/33.— Whereas by Government Notifications in the General Department No. 3550/33, dated the 28th March 1942 and No. 3550/33, dated the 14th July 1941, the Government of Bombay in exercise of the powers conferred by sub-section (2) of section 14 of the Bombay Town Planning Act, 1915 (Bom. I of 1915) sanctioned the two draft Schemes (hereinafter called "the said Schemes") submitted by the Sholapur Borough Municipality in variation of the final Town Planning Scheme, Sholapur No. II, made by the said Municipality; and in exercise of the powers conferred by section 29 of the said Act also appointed an Arbitrator for the said Schemes;

And whereas the said Arbitrator has submitted to the Government of Bombay through the said Municipality a one combined final Scheme (hereinafter called "the said final Scheme") in respect of the said Schemes as required by subsection (1) of section 40 of the said Act;

The Government of Bombay is hereby pleased to sanction the said final Scheme. The said final Scheme shall be open to the inspection of the public, at the office of the said Municipality at Sholapur, during its office hours on every day, except Sundays and holidays and printed copies of the said final Scheme will be obtainable at + per copy.

Price to be filled in by the G.D.

The date on which all liabilities created by the said final Scheme shall take effect and the said final Scheme shall come into force shall be the * 1942.

* To be filled in by the G.H., a date not earlier than one month after this publication.

By order of the Governor of Bombay,

Under Secretary to
Government.